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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/173976

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 27, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 25, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency correctly denied the petitioner's April 8, 2016 application for FoodShare (FS) benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. For the purposes of FoodShare (FS) benefits, the petitioner is a household size of two consisting of himself and his wife. He has two children whom he has 50/50 placement with. Those children are on their mother's FS case.

3. On April 8, 2016 the petitioner applied for FS benefits. The household's monthly gross income is \$4,042 consisting of \$2,451 from the petitioner's wife's employment and \$1,591 from the petitioner's unemployment.
4. The household pays \$607 for a mortgage and taxes. They are also responsible for other household expenses including utilities. The petitioner also pays \$151 per month in support payments.
5. On April 11, 2016 the agency sent the petitioner a notice stating that his April 8, 2016 application for FS benefits had been denied.
6. On April 29, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### **DISCUSSION**

No person can be a member of more than one household when determining monthly FS benefits. 7 C.F.R. §273.3. Problems arise when parents have joint custody with 50/50 placement of a child. *FS Wisconsin Handbook*, § 3.2.1.1. The handbook states that in the case of joint custody with 50/50 placement where neither parent is designated the primary caretaker, the parents can be asked to decide. *Id.* If the parents are unable to decide, then the handbook directs the agency to compare the parents' parenting activities and responsibilities against each other in order to determine which parent exercises the most control over the children. *Id.* If the agency is still unable to make a determination, then the parent who first applied for FS for the children is eligible. *Id.*

In this case the petitioner and the mother of children have 50/50 placement. Both exercise parental duties and control over the children. The agency properly included the children on their mother's case, not the petitioner's case because the mother was the first to apply for and receive FS benefits. I note that given that there are two children, the most equitable arrangement would be for each parent to have one child listed on his or her FS case. The problem though is that the petitioner is ineligible for FS benefits as a household size of three and a household size of four. Thus, even if both of his children were included on his FS case, he would still be ineligible for FS benefits.

Non elderly or disabled households are not eligible for the FS program if the household's gross income exceeds 200% FPL. *FSWH*, 4.2.1.1. For a household size of two, 200% FPL is \$2,656. *FSWH*, 8.1.1. For a household size of three the gross income limit is \$3,350. *Id.* For a household size of four the gross income limit is \$4,042. *Id.* The petitioner is completely ineligible based on gross income alone. Although he would be under the gross income limit as a household size of four, he would still be ineligible given the household deductions and expenses. This is a moot point because the agency properly calculated his FS eligibility using a household size of two.

### **CONCLUSIONS OF LAW**

The agency correctly denied the petitioner's April 8, 2016 application for FoodShare (FS) benefits.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 1st day of June, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 1, 2016.

Racine County Department of Human Services  
Division of Health Care Access and Accountability